REMARKS

The present Amendment is in response to the Office Action mailed February 15, 2005. Claims 1, 5, 7, 13, 17, and 22-23 are amended. Claims 1-23 are now pending in view of the above amendments.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding. Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Rejections Under 35 U.S.C. §§ 102 and 103

The Office Action rejected claims 1, 2, 7, 9, 10, 17, and 19 under 35 U.S.C. § 102(e)[1] as being anticipated by United States Publication No. 2003/0174937 A1 (*Huang*). Claims 3-4, 11-12, 15-16, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Huang*. Claims 5-6, 13, and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Huang* in view of U.S. Patent No. 4,290,667 (*Chown*). Claims 8 and 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Huang* in view of U.S. Patent No. 6,767,139 (*Brun*).

Anticipation requires that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The following discussion illustrates that *Huang* does not anticipate claims 1, 2, 7, 9, 10, 17, and 19.

Claim 1 has been amended to require a spacer ring disposed within the housing. Claim 1 further requires that the spacer ring fix the relative position between the first ball lens and the

[1] Because *Huang* is only citable under 35 U.S.C. § 102(e) Applicants do not admit that *Huang* is in fact prior art to the claimed invention but reserve the right to swear behind *Huang* if necessary to remove it as a reference.

filter. The Office Action admits that the spacer ring is not taught by *Huang*. *See* Office Action, page 4. Claim 1 is therefore not anticipated by *Huang* because the requirements of anticipation are not satisfied. Claims 7 and 17 have been similarly amended and are not anticipated for at least the same reasons. Because the independent claims 1, 7, and 17 are not anticipated by *Huang*, the dependent claims 2, 9-10, and 19 are likewise not anticipated by *Huang*.

Claim 1 incorporates the limitation of claim 5 and as indicated above, claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Huang* in view of *Chown*[2]. For purposes of 35 U.S.C. § 103, however, *Huang* is disqualified as prior art under 35 U.S.C. § 103(c)(1). In particular: *Huang* only qualifies as art under 35 U.S.C. § 102(e) and both the claimed invention and the subject matter of *Huang* were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Because *Huang* is disqualified, the primary reference is removed as a 103 reference and cannot be used to establish 35 U.S.C. § 103 rejections. For at least these reasons, claim 1 as amended is in condition for allowance. The dependent claims 2-6 are also in condition for allowance for at least the same reasons.

The independent claims 7 and 17 are believed to be in condition for similar reasons. More particularly, *Huang* is disqualified as prior art for purposes of 35 U.S.C. § 103 rejections. Because claims 7 and 17 each incorporate subject matter that the Examiner admits is not taught by *Huang*, the independent claims 7 and 17 are not anticipated. Thus, the *prima facie* case of obviousness cannot be established because the primary reference (*Huang*) is removed as reference under 35 U.S.C. § 103(c)(1). The dependent claims 8-16, and 18-23 are also in condition for allowance for at least the same reasons.

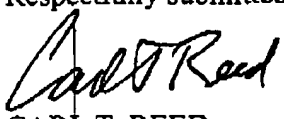
[2] Although the prior art status of the cited art, other than Huang, is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art or construed as acquiescing to the purported teachings of the cited art.

Conclusion

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 15th day of July 2005.

Respectfully submitted,



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